HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 82 of 1995

Decided on: 15.6.2007

Pushap Lata and others .....Appellants.

Versus

Thanthu and others .....Respondents.

Coram:

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting?

For the appellant: Mr.Ramakant Sharma, Advocate.

For the respondents: None.

V.K. Ahuja, J (oral):

This is a regular second appeal filed by the appellants against the judgment and decree of the court of ld.District Judge, Mandi, dated 21.11.1994, vide which the appeal filed by respondent No.1 against the judgment and decree of the court of learned Sub Judge, Joginder Nagar, dated 30.5.1990, was allowed and the suit of the plaintiff was dismissed accordingly.

Briefly stated the facts of the case are that a suit was filed by original plaintiff Tulsi Nand, now represented by his LRs, as against respondent No.1 and

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[1]. Whether reporters of Local papers may be allowed to see the judgment?

others for declaration with consequential relief of injunction. The said suit was decreed by the ld.trial court on 30.5.1990. On appeal, the findings were reversed and the suit was dismissed by the ld.Distirct Judge vide his judgment and decree dated 21.11.1994. During the course of the pendency of the appeal, it was brought to the notice of the Court by the learned counsel for the appellant that respondent No.2 Chanchal Ram before the court of ld.District Judge had already died on 7.8.1993 before the appeal was decided by the ld.District Judge on 21.11.1994. Copy of the death entry was also filed by the appellant showing the date of death as 7.8.1993. Thus, it is clear that when the case was decided by the ld.first appellate court, one of the respondents was already dead and the decree in question can be said to be a nullity. A question arises as to by which court this question is to be determined as to whether the suit has abated or what is the effect of death of respondent No.2. On perusal of the judgment of this Court in **Jagdish** v. **Ram Karan & others, 2002 (2) S.L.J. 968** shows that the question is to be decided by the court in which the suit or appeal was pending at the time of death of the party. All such questions as to abatement or the effect of the death have to be considered by the court where the lis was pending at the time of death of the said party. Similar view was also taken by this court in **Barfi Devi and others** v**. State of H.P. and others, 2001 (2) Shim.L.C. 162**, as well as in **Karam Chand and others** v**. Bakshi Ram and others, 2002 (1) Shim.L.C. 9**.

It is clear from a perusal of the above discussion that the case has to be remanded back to the court of the ld.first appellate court to decide the appeal, to consider the effect of the death of respondent No.2 Chanchal Ram and pass

appropriate orders accordingly. The appeal filed by the appellant is accepted and the case is remanded back to the ld.first appellate court to decide the question afresh in view of the observations made above. In view of the fact that none is appearing for the respondents, no date is being fixed for hearing. The ld.first appellate court shall issue notice to the parties and then proceed with the case according to law and decide the appeal again after hearing the parties.

(V.K. Ahuja), J.

June 15, 2007 (trs)